IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 501 of 1991

with

CRIMINAL APPEAL NO.502 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

CHAUDHARI JESANGBHAI M

Appearance:

Mr. U.R. Bhatt, APP for appellant

MR TUSHAR MEHTA for Respondent

Mr.N.K. Majmudar for the original complainant

ABATED for Respondent No. 5 and 7

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/02/2001

COMMON ORAL JUDGEMENT

1. Criminal Appeal No.501 of 1991 is filed by the State of Gujarat, under Section 378 of the Code of Criminal Procedure, against the judgment and order dated May 31, 1991, passed by the learned Judicial Magistrate, First Class, Patan, in Criminal Case No.3308 of 1986, by which judgment and order, the respondents (original accused Nos.3 to 10) came to be acquitted for the offences punishable under Sections 147, 148, 326, 323, 506 and 506(2) read with 149 of the Indian Penal Code.

2. Criminal Appeal No.502 of 1991 is filed by the State of Gujarat under Section 11 of the Probation of Offenders Act, 1958 ('Act' for short) against aforesaid impugned judgment and order of the learned Judicial Magistrate, First Class, Patan, whereby, the learned Magistrate, though convicted the respondents under Section 326 of the Indian Penal Code, released them under Section 4(1) of the Act on probation of good conduct on their executing a bond in the sum of Rs.2000 with one surety for like amount for a period of two years and in the meantime to keep the peace and be of good behaviour. As common question of facts and law arise for my consideration, I propose to dispose of both the appeals by this common order.

3. According to the prosecution, an incident had taken place on May 24, 1986 at 7 a.m. at village Kansa, Taluka Patan, wherein, original accused Nos. 1 to 10 had formed an unlawful assembly by carrying deadly weapons in their hands. Original accused No.1, Jasangbhai Maghabhai, and original accused No.7, Bababhai Amthabhai, were armed with dharia, whereas accused No.2, Laxman Amthabhai was carrying a stick. According to the prosecution, other accused persons were also carrying sticks. Complainant, Raymal Visa, was talking with Bhagwan Visa. At that time, accused No.1, Jesangbhai Maghabhai, gave a blow with dharia on Bhagwan Visa. When complainant, Raymal Visa, intervened, accused No.2 had given a stick blow to him. The shouts were raised by the complainant and injured Bhagwan Visa and, therefore, Rugnath Kala, Vela Okha, Vira Kama had rushed to the place of incident and rescued the complainant and Bhagwan Visa. While running away from the place of incident, all the accused persons had uttered words "today you have escaped but on getting opportunity you will be finished".

4. Complainant, Raymal Visa, lodged a complaint at Vagdod Police Station against the original accused which was registered as C.R. No.I-51/86, for the offences mentioned above. The investigation of the above offences

was conducted by PSI, N.C. Oza, who drew panchanama and recorded statements of various witnesses and, after receiving injury certificate, filed a chargesheet against the original accused in the Court of learned Judicial Magistrate, First Class, Patan, which came to be registered as Criminal Case No.3308 of 1986.

5. To prove the charges framed against the respondents, the prosecution examined various witnesses and produced documentary evidence. The learned Magistrate, on appreciation of evidence, acquitted original accused Nos. 2 to 10 from the charges framed against them, which has given rise to filing of Criminal Appeal No.501 of 1991.

6. It may be mentioned that respondents Nos.5 and 7 had expired during pendency of the appeal and, therefore, the appeal qua respondents Nos. 5 and 7 stands abated under Section 394(2) of the Code of Criminal Procedure.

7. Learned APP, Mr. U.R. Bhatt, for the appellant, learned advocate Mr.N.K. Mazmudar for the original complainant, and learned advocate Mr. Tushar Mehta for the respondents have taken me through the entire evidence of the case.

8. Having heard the learned advocates for the parties, I am of the view that the learned Magistrate committed no error in acquitting the original accused Nos. 2 to 10 from the charges framed against them. The findings of the learned Magistrate, in my opinion, are cogent and convincing and based on proper appreciation of evidence. The prosecution had not explained the delay in filing first information report, which was proved fatal. The first information report was lodged after a long delay because there was due deliberation between the witnesses of the prosecution and they had falsely involved other accused persons in the present case. Therefore, in my opinion, the learned Magistrate was justified in acquitting the original accused Nos. 2 to 10 from the charges framed against them. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of observing demeanour of witnesses. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the

learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate had given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor and the learned counsel for the complainant have failed to dislodge the reasons given by the learned Magistrate in order to convince me to take the view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

9. With regard to Criminal Appeal No.502 of 1991 filed by the State of Gujarat under Section 11 of the Act, it may be mentioned that the learned Magistrate, after holding the respondents guilty of the offences punishable under Section 326 of the Indian Penal Code, had called for a report of the Probation Officer. The learned Magistrate was satisfied that the case of the respondent deserved to be considered sympathetically under Section 4 of the Act. Looking to over all circumstances of the case and the antecedents of the respondents, the learned Magistrate had extended the benefit under Section 4 of the Act and had suspended the sentence for two years on respondents executing a bond in the sum of Rs.2000/- and a surety for the like amount for keeping good behaviour and not committing any breach of peace during that period. The learned Magistrate also directed that the respondent be placed under supervision of the Probation Officer and the Probation Officer was directed to submit a report, on every three month, of the conduct and behaviour of the respondents. The learned Magistrate had also directed the respondents to pay compensation of Rs.3000/- to the injured witness, Bhagwan Visa.

10. Learned APP, Mr. U.R. Bhatt, submitted that, when the learned Magistrate had come to the conclusin that the respondents were found to have been committed offence under Section 326 Indian Penal Code which was punishable with imprisonment of life, the learned Magistrate had erred in releasing the respondent by giving the benefit of probation under Section 4 of the Act. The submission of the learned APP deserves to be accepted. In view of the decision of the Supreme Court in the case of Jagdev Singh and another vs. State of Punjab, reported in 1973 Supreme Court Cases (Cri) 977, the learned Magistrate has erred in releasing the respondents on probation under Section 4 of the Act. However, it may be mentioned that, after giving the benefit of probation, it was found by the District Probation Officer, Mehsana, that the respondents had committed breach of the order of the learned Magistrate

and had not reported to the Probation Officer. In view of the above conduct of the respondents, the Probation Officer had filed an application before the learned Magistrate which was admitted at Exh.72. As the learned Magistrate had found that the respondent had committed breach of the order of probation, the learned Magistrate had sentenced the respondent to undergo S.I. for two years and fine of Rs.1000 in default S.I. for one month by his order dated July 1, 1992. As the respondent had already been sentenced to undergo imprisonment, it would be a futile exercise to entertain this application and to direct the respondents to once again undergo an imprisonment for the offence under Section 326 Indian Penal Code. In view of the facts stated above, as the order of granting probation was recalled and the respondent was already sentenced to undergo two years simple imprisonment and fine of Rs.1000 in default S.I. for one month, the order of probation had ceased to remain in force and no further sentence requires to be imposed on the respondent. Therefore, this appeal under Section 11 of the Act does not survive after the conviction of the respondent as mentioned above and, hence, it is dismissed.

10. As a result of foregoing reasons, Criminal Appeal No.501 of 1991 and Criminal Appeal No.502 of 1991 are dismissed.

February 16, 2001 (M.H. Kadri, J.)
(swamy)